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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/774,968
Filing Date: February 09, 2004
Appellant(s): WALTERS ET AL.

Michael Wiggins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 5, 2009 appealing from the Office action mailed August 7, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6981293	Steinberg	1-2006
6250829	Brower et al.	06/2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinberg (US Patent 6,981,293) in view of Brower et al. (US Patent 6,250,829).

Steinberg discloses a device for providing self-assisting hygienic activity to individuals of limited dexterity, the device including an elongated body constructed of first and second telescoping portions and terminating at a first end in an ergonomically configured handle. A hygienic related accessory is secured to the other end of the elongated body. The accessory capable of being manipulated relative to the elongated body in at least one of axially extending and angularly configurable fashions and the accessory is further capable of being releasable engage able to the associated end of the elongated body and substituted by at least one alternately configured accessory drawn from at least one of a sponge attachment, lotion dispensing attachment, disposable sheet attachment, scrub brush attachment and powder applicator attachment (abstract).

Steinberg's figure 8 shows a gripping location which illustrates a number of individual and flexible leafs arranged annularly disposed fashion for gripping a selected corner of the attachable sheet (column 3, lines 23-26).

Steinberg does not disclose the use of a lotion impregnated sheet.

Brower discloses an applicator article for the convenient and controlled application of lotion to a user's skin that is impregnated with fluid. The lotion may be a combination of sunscreen and insect repellent (abstract).

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. The prior art reference does not disclose the top surface having a arcuate cross section and a bottom surface having a substantially planar surface, however, barring a showing to criticality of the claimed design, it is the examiners position that it would have been obvious to a person of ordinary skill in the art to design the applicator body in any manner suitable to meet the needs of the intended function.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have incorporated a lotion impregnated sheet, or in the alternative, it is the examiners position that a disposable sheet attachment would encompass a lotion impregnated sheet, since Steinberg discloses the objective of the apparatus is to provide self-assisting hygienic activity to individuals of limited dexterity (abstract).

(10) Response to Argument

Appellant argues the combination of Steinberg and Brower teach away from the claimed invention and assert that Steinberg is directed to a device for cleansing and removal of debris from excretory and vaginal orifices and surrounding areas.

The Examiner respectfully disagrees with the Appellants sweeping assertion of intended use of the Apparatus of Steinberg. Steinberg expressly discloses the device is intended to provide self assisting hygienic activity to individuals with limited dexterity (abstract) and is capable of supporting a number of different accessories for assisting all persons, allowing them to perform their daily hygiene on their own, be more self sufficient and able to feel a sense of dignity (column 1, lines 6-16).

Appellants appear to be focused solely on the embodiment within the drawings of Steinberg relating to a lotion dispensing attachment as seen in Figure 7. While it is acknowledged by the Examiner that this particular attachment is not the claimed invention, it is the position of the Examiner that the skilled artisan would not regard this as a teaching away as being the only means possible for applying a lotion product using the apparatus of Steinberg. Steinberg additionally discloses the use of disposable sheet attachments, which can be seen in Figures 1-5, which disclose embodiments having a sleeve cover over the attachment, and in Figure 8, which discloses grippings on the corners of the attachment for disposable sheet attachment. Thus, Steinberg clearly discloses the same apparatus of that in the instant claims.

While it is acknowledged that the disposable sheet of Steinberg is not disclosed as being impregnated with lotion, disposable sheets impregnated with lotion are well

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known in the art, as disclosed by the teachings of Brower and to which Appellant has offered no arguments regarding such a teaching.

Appellants argues the wipe of Brower teaches away from the claimed combination since it is intended to be used on the users hand, therefore using a body or handle is inconsistent with the express teachings of Brower. The Examiner respectfully again disagrees. While it is acknowledged that Brower does not teach or suggest using apparatus of Steinberg, it would have been obvious to the skilled artisan to have employed the apparatus for the exact reasons Appellant has presented on page 11 of their arguments, to reach areas of the body such as the upper, lower and middle-back regions since Steinberg discloses that intended purpose, "to assist those with limited dexterity to enable them to perform their daily hygiene on their own". Steinberg's device is analogous to the hand taught by Brown. Thus, one using Steinberg's device rather than a hand to reach body parts due to limited dexterity, would use Brown's impregnated sheet on the device rather than the hand. Appellant's attention has been drawn to the MPEP 2123, which discloses examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Steinberg clearly discloses the apparatus having an accessory for using disposable sheets. The use of lotion impregnated sheets are well known in the art, and therefore, it would have been obvious to one of ordinary skill in the art to have used any type of disposable sheet available in order to obtain the same advantages of the apparatus.

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Regarding the limitations of Claims 6 and 11-13. Appellants argue the Examiner is not entitled to ignore limitations of the claims. The Examiner has pointed Appellant to MPEP 2144.04 section IV B, which discusses changes in shape. Therefore, barring a showing of criticality to the claimed shape of the device, it is the position of the Examiner that apparatus of Steinberg would perform the same function as the instant claims. There does not appear, nor has there been any arguments presented as to the criticality the claimed shape and its patentable distinction over the prior arts apparatus.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melissa S Mercier/

Examiner, Art Unit 1615

Conferees:

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